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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. MARVIN ARMONDO AREVALO, Defendant and Appellant.	B236865 (Los Angeles County Super. Ct. No. TA115647)

APPEAL from a judgment of the Superior Court of Los Angeles County. Eleanor J. Hunter, Judge. Affirmed.

Eber N. Bayona, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Paul M. Roadarmel, Jr., and Steven D. Matthews, Deputy Attorneys General, for Plaintiff and Respondent.

* * * * * *

Appellant Marvin Armondo Arevalo was convicted by jury of possession for sale of cocaine base in violation of Health and Safety Code section 11351.5 (count 1), possession for sale of a controlled substance (methamphetamine) in violation of Health and Safety Code section 11378 (count 3), and possession for sale of marijuana in violation of Health and Safety Code section 11359 (count 4).[1] Appellant waived a jury trial on his prior conviction allegations and the trial court found true that he had suffered two prior convictions pursuant to Health and Safety Code section 11370.2, subdivision (a), and three prior prison terms under Penal Code section 667.5, subdivision (b).[2]

Appellant was sentenced to a total prison term of 14 years and four months: the midterm of four years, plus three years pursuant to Health and Safety Code section 11370.2, subdivision (a) on count 1; three years and eight months, comprised of eight months (one-third the midterm of 24 months), plus three years pursuant to Health and Safety Code section 11370.2, subdivision (a) on count 3; eight months on count 4; and one year as to each count pursuant to section 667.5, subdivision (b).

Appellant contends that the trial court abused its sentencing discretion, improperly denied his request for a continuance on the date of trial, and failed to sua sponte instruct the jury on the medical marijuana defense. Appellant also contends that the prosecution committed multiple *Brady*[3] violations which denied appellant a fair trial, and that there was insufficient evidence to support appellant's conviction. We find no merit to any of appellant's contentions.

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1 The information listed the counts as 1, 3 and 4.

2 All further statutory references are to the Penal Code unless otherwise stated.

3 *Brady v. Maryland* (1963) 373 U.S. 83 (*Brady*).

FACTS

Prosecution Case

At 5:30 a.m. on December 2, 2010, Detective Regan Fitzgerald of the Los Angeles County Sheriff's Department and six or seven other officers of his narcotics crew went to a residence on 106th Street in Los Angeles to serve a search warrant. Detective Fitzgerald determined that appellant resided at the location through police databases and had observed him coming out of the location a few days earlier. A Los Angeles County SWAT team entered and secured the house. Through a bathroom window, an officer saw one of the occupants, Jorge Delgado, throw rock cocaine down the toilet and toss a baggie containing tar heroin on the ground. Appellant and three others were in the northeast bedroom while the fifth was found in the kitchen. Five individuals including appellant were detained and brought outside.

Detective Fitzgerald and his team entered the location and proceeded to search the premises with the assistance of a canine unit. The dog alerted the officers to a dresser in the northeast bedroom. Inside the top drawer of the dresser was a Pepsi can, described by Detective Fitzgerald as a "stash can" customarily used to hide narcotics. Inside the Pepsi can was a plastic baggie containing methamphetamine and three baggies containing rock cocaine. Detective Fitzgerald estimated that the stash can contained "anywhere from 100 to 150 doses of methamphetamine" and "about 106 doses of rock cocaine." Three sandwich-sized plastic baggies containing marijuana were recovered from the same drawer. Additional items in the drawer included several articles of mail and receipts containing appellant's name with the address of the location being searched.

Two electronic scales were found on the countertop in the kitchen. A small plastic bottle labeled "7 Star Super Lactose" which contained a cutting agent for cocaine and methamphetamine was recovered from the kitchen. Empty plastic baggies which matched the baggies containing the drugs recovered from the dresser drawer were found in the house. Detective Fitzgerald observed a television set in the living room that was being used as part of a surveillance system to monitor activity outside the house.

Outside, officers found one video camera concealed under the eave at the front of the house, and another concealed in an adjacent tree.

Police searched appellant after his arrest and recovered $495 from his person, all in small denominations of fives, tens, and twenties.

Based on his education, training and experience in narcotics, Detective Fitzgerald offered the following opinions: Drug users tended to have a "drug of choice" and it was not normal to see a drug user with three different types of drugs. Those who sold narcotics mixed a cutting agent similar to the lactose found in the kitchen with methamphetamine and cocaine. This process "almost doubles their profit" because the drugs are sold "in bulk" and the lactose is tasteless and looks similar. Scales were commonly used to weigh narcotics, and the empty baggies found at the location were similar to those used to package them. The positioning of the concealed cameras and the elaborate surveillance system allowed the occupants of the house to see who was coming and going and aided the sale of narcotics.

Responding to a hypothetical question based on the facts of the case, Detective Fitzgerald testified that the quantity of narcotics recovered and the absence of smoking paraphernalia at the location, the presence of the scales, cutting agent, and baggies, the amount and denominations of money found on appellant, and the elaborate surveillance system in the house, it was his opinion that the cocaine, methamphetamine and marijuana were possessed for sale.

Los Angeles County Sheriff's Department senior criminalist Michael Vanesian testified that on December 3, 2010, he conducted tests on the items recovered from the residence on 106th Street. One baggie contained 4.93 grams of methamphetamine, and three baggies contained a total net weight of 10.62 grams, two of which were tested and contained a net weight of 7.11 grams of cocaine base. On December 6, 2010, he analyzed three additional baggies that were recovered from the residence that had a total net weight of 46.9 grams of plant material. He conducted a test on two of the three and determined they contained 46.2 grams of marijuana.

Defense Case

Amanda Jacobsen dated appellant in the past. She testified that appellant lived in Riverside in December 2010, and worked at a recycling center owned by his mother.

Zacarias Herrera testified that he owned the property on 106th Street that was the subject of the search warrant on December 2, 2010. He stated that he rented it to a "young lady" and not appellant. Herrera's brother lived in a back house on the property and occasionally he saw appellant playing basketball with his brother. Herrera kept a number of classic collectible cars on the property and used the cameras to monitor the yard and protect his cars. When he rented the house he took out the television that he used but showed the new tenants how to hook up the cameras to a regular television. He testified that he could not see through the bathroom window of the house if he was standing outside because it was too high.

Wilson Brown, appellant's defense investigator, visited the property on 106th Street and testified that in that neighborhood "every single home, to varying degrees, had some form of or combination of security devices, be they physical, sonic, lighted, or video." He photographed and measured the bathroom window and found the bottom of the window was seven feet two inches from the ground. He opined that it was common for someone using cocaine to also use methamphetamine. To his knowledge, lactose was a dietary substance used by diabetics. He did not think $495 was a large amount of money in the drug business.

Maria Daysi Miranda, appellant's aunt, testified that appellant worked at the family recycling business. Customers brought in scrap metal and were paid in cash. Appellant was paid in cash for working there. In December 2010, appellant was living in Riverside.

DISCUSSION

I. Appellant's Sentence Was Proper

Appellant contends that the trial court abused its discretion by imposing three sentences and five enhancements "for one act of possession of drugs." He contends that

his possession was "a single act" which had "identical elements, identical focus, identical specific intent," and imposing separate punishments violated section 654, subdivision (a). He contends the trial court failed to follow the rules of court and state reasons for its sentencing choices. He argues that his total sentence should be eight years comprised of the midterm of four years as to count 1, plus one consecutive three-year term pursuant to Health and Safety Code section 11370.2, subdivision (a), plus one consecutive one-year term pursuant to section 667.5.

A. Section 654

Where a single episode results in the commission of multiple crimes, the question of whether the trial court can impose separate sentences for each crime is guided by section 654. That section provides, in part: "An act or omission that is punishable in different ways by different provisions of law shall be punished under the provision that provides for the longest potential term of imprisonment, but in no case shall the act or omission be punished under more than one provision." (§ 654, subd. (a).) The question presented is whether the conduct is divisible into separate acts and the answer to that question depends on the "'intent and objective' of the actor." (*People v. Cleveland* (2001) 87 Cal.App.4th 263, 267.) Whether the acts committed were driven by separate intents or objectives is a matter for the trial court to decide. On appeal the actual or implied findings of the trial court will be upheld if they are supported by substantial evidence. (*People v. Osband* (1996) 13 Cal.4th 622, 730.)

Two cases provide guidance for the application of section 654 in this type of case. In *In re Adams* (1975) 14 Cal.3d 629, 632, a state narcotics agent followed the defendant's car to a parking lot, where the defendant transferred five kinds of illegal drugs to his codefendant's car. After the defendant was convicted of five transportation-for-sale offenses corresponding to the kinds of drug involved in the aforementioned transaction, the trial court imposed multiple punishments for these offenses. (*Ibid.*) Our Supreme Court held that this was error under section 654, reasoning that the evidence at trial showed only that the defendant had simultaneously transported a variety of illegal

drugs with a single purpose, namely, to deliver them to his codefendant. (*In re Adams, supra,* at p. 635.)

By contrast, in *People v. Blake* (1998) 68 Cal.App.4th 509, 511–512, a search of the defendant's car disclosed several items indicating that he was involved in the sale of illegal drugs, including a jar containing methamphetamine in the left fender well, a length of pipe containing marijuana hidden in another location, a "pay-owe" sheet with multiple entries, a police scanner, baby wipes, and a scale. The defendant was convicted of two separate transportation-for-sale offenses, and the trial court imposed punishment for each offense. (*Id*. at pp. 510–511.) The appellate court affirmed, pointing to evidence that the defendant had engaged in multiple sales to different individuals, rather than one single delivery: the two different kinds of drug were hidden in separate locations within the car, and packaged in a manner permitting multiple sales to different individuals; the pay-owe sheet and scale also indicated multiple discrete sales.

Here, appellant was convicted of possession for sale. As in *Blake*, the trial court here could reasonably conclude that appellant, who was in possession of three different narcotic substances, cocaine, methamphetamine and marijuana, intended to package the drugs and sell to different buyers. The presence of scales, baggies, a cutting agent and a surveillance system, suggested appellant was engaged in multiple sales and not one transaction. Appellant did not raise section 654 in the trial court.[4] Thus the court was not called upon to address the issue. But, the fact the court not only imposed a separate sentence, but also imposed a consecutive sentence leads us to conclude there was an implied finding of separate intent.

The cases appellant relies on are not helpful to his position. *People v. Memory* (2010) 182 Cal.App.4th 835 does not contain a single reference to section 654. In *People v. Sanchez* (2009) 179 Cal.App.4th 1297, the court held that section 654 precluded multiple punishment for both active participation in a gang and the underlying felony that

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[4] We note that appellant is represented by the same counsel that defended him at trial.

is used to satisfy the element of gang participation. (*Sanchez, supra,* at pp. 1301–1302.) In *People v. Summersville* (1995) 34 Cal.App.4th 1062, the court specifically held that "[a] conviction under section 245, subdivision (a)(1) cannot be enhanced pursuant to section 12022, subdivision (b)." (*Id*. at p. 1070.) Neither *Sanchez* nor *Summersville* have any application to the facts here.

B. Consecutive Sentence

Appellant appears to contend that the trial court abused its discretion in imposing consecutive sentences because it failed to state reasons for its sentencing choices. Appellant's brief states, "The court violated rules of court by failing to sentence the defendant to either concurrent or consecutive time."

Appellant was asked on two occasions if he wished to be heard with regard to sentencing and he declined both times. While it is true the court did not articulate the reasons for her choice, the court stated that she had "read and considered the probation officer's report." Having ruled on appellant's priors she was aware of his criminal history. She noted that being on probation or parole had not "deterred his criminal conduct" and that he had been on parole when he committed the current crimes. There was no discussion of whether a consecutive sentence was appropriate prior to the court's pronouncement of sentence. No objection was made to the court's decision, thus appellant's current claim of error for failure to state reasons for the sentencing choice has been raised for the first time on appeal.

The court in *People v. Scott* (1994) 9 Cal.4th 331, 353–356, held that challenges to a sentencing choice, based on the failure to properly state reasons for the choice must first be raised in the trial court or the issue will be deemed waived on appeal. Because appellant did not raise this issue in the trial court, we deem the issue has been waived.

In any event, section 667.5, subdivision (b) mandates a consecutive "one-year term for each prior separate prison term served for any felony." Appellant had three prior prison terms. Health and Safety Code section 11370.2, subdivision (a) provides for a "full, separate, and consecutive three-year term" for each prior felony conviction for specified narcotics violations, of which appellant had two.

To the extent appellant contends the court abused its discretion in selecting consecutive sentences on counts 3 and 4, we find the argument to be without merit. Trial courts have broad sentencing discretion in choosing between concurrent and consecutive sentences. (*People v. Bradford* (1976) 17 Cal.3d 8, 20.) We review the trial court's decision for abuse of discretion. (*People v. Birmingham* (1990) 217 Cal.App.3d 180, 185–186.) Applying the abuse of discretion standard to the decision in this case, we are satisfied the court could reasonably find that appellant's possession for sale of methamphetamine and marijuana warranted additional punishment beyond that for the possession for sale of cocaine and we find no abuse of discretion in the sentence imposed.

II. Appellant's Request for a Continuance on the Date of Trial

Appellant contends the trial court abused its discretion by denying his request for a continuance and refusing to calendar a *Pitchess*[5] motion he filed on the date of trial. Appellant's arguments, including an allegation that the court adhered to an automatic 30-day motion cutoff rule, are contradicted by the facts and by counsel.

A. Standard of Review

"Continuances shall be granted only upon a showing of good cause." (§ 1050, subd. (e).) "While the determination of whether in any given case a continuance should be granted 'normally rests in the discretion of the trial court' [citation], that discretion may not be exercised in such a manner as to deprive the defendant of a reasonable opportunity to prepare his defense." (*People v. Murphy* (1963) 59 Cal.2d 818, 825.) There are no mechanical tests for determining when a denial of a continuance is so arbitrary as to violate due process. The answer must be found in the circumstances present in each case. (*People v. Strozier* (1993) 20 Cal.App.4th 55, 60.) To obtain a continuance, appellant is required to show that a continuance would have been useful. (*People v. Frye* (1998) 18 Cal.4th 894, 1013.) A denial of a motion for continuance will

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5 *Pitchess v. Superior Court* (1974) 11 Cal.3d 531 (*Pitchess*).

not be disturbed in the absence of a clear showing of abuse of discretion. (*People v. Jenkins* (2000) 22 Cal.4th 900, 1037.)

B. Background

The preliminary hearing took place on March 15, 2011. Detective Fitzgerald was the only witness called by the prosecution. On March 29, 2011, appellant was arraigned. He pled not guilty and the matter was set for trial on May 26, 2011.

A pretrial conference took place on April 27, 2011, during which the trial date of May 26, 2011 was advanced and vacated, and a pretrial conference was scheduled for May 17, 2011.[6] The minute order reflects that on May 17, 2011, appellant's motion to continue was denied and that if "defendant needs to continue the matter he must file a written motion prior to the trial date." On May 25, 2011, appellant's counsel filed a motion for continuance. The accompanying declaration (dated April 11, 2011), requested "time to adequately investigate the case." The court's minute order dated May 26, 2011, stated that the matter was continued to the next court date which was a trial scheduled for May 31, 2011.

On May 31, 2011, appellant and counsel appeared for trial in the master calendar court. The court noted that appellant's counsel had "been on this case at least since March [2011] and maybe earlier than that" and counsel acknowledged that he had been representing appellant "since the beginning of the year." Appellant's counsel stated he was not ready and took "full responsibility for the delay." He "thought that the case was going to settle" and acknowledged that he did not "manage it properly." He stated that appellant had recently been arrested and he decided to file a *Pitchess* motion.[7]

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[6] The record on appeal does not contain the transcripts of any hearings prior to May 31, 2011.

[7] Later that day, appellant's counsel stated on the record "On April 26th, as my declaration states, my client was rearrested by Officer Fitzgerald." Counsel's declaration filed on May 27, 2011, stated that appellant was arrested on May 9, 2011.

Although counsel represented to the court that he "did not file a Pitchess motion until Friday," (May 27, 2011) the proof of service appended to the motion purports that it was served by facsimile at 2:59 p.m. on May 31, 2011, to the court clerk and to the "Century Station" in Lynwood. In three separate places the motion and accompanying declaration are signed and dated by counsel reflecting May 31, 2011. The motion bears a date stamp from the court indicating it was filed on May 31, 2011.

The court pointed out that counsel had "a history of never coming to court or coming late and sending other people." The court stated that on May 26, 2011, he had informed counsel's "associate" who appeared for appellant, that trial was set for May 31, 2011. The court stated that counsel's motions for continuances "have never been timely" and denied the oral request for a continuance.

A minute order dated May 31, 2011, indicates that a defense motion to continue was denied by Judge Allen J. Webster, Jr.[8] The matter was "transferred to Department G forthwith" for jury trial.

Appellant's counsel filed a declaration and repeated his request for a continuance in Department G.[9] He requested time to interview witnesses and investigate the case. He argued that it was his understanding from the hearing on May 26, 2011, that the court had "clearly indicated that, as long as a 1050 was filed indicating why a continuance was needed in [the] case, that it would be—that it would be fine for us." Counsel stated that he had a "certified copy of the *Pitchess* motion that was filed on Friday."

The trial court told appellant's counsel that she had consulted with the other judges about the history of the case and that as an officer of the court, counsel should be "very precise" and needed to be "very careful" about any representations he made. The court stated that there was no representation by the court that if counsel filed a request for

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8 The record on appeal does not contain a transcript of the hearing, nor is it clear which motion this refers to. Absent any other continuance motion in the record we assume it was the motion filed by appellant on May 25, 2011.

9 The declaration states it was prepared and executed on May 27, 2011, but was obviously filed on May 31, 2011, because it referenced Judge Webster's ruling.

continuance it would be granted. The court noted that this request for a continuance based on the need to interview additional witnesses and await the results of a *Pitchess* motion, was the same as that which had been denied earlier in the day by Judge Webster, and denied the motion.

C. Analysis

The point urged by appellant to which he devotes the most attention in his brief is the failure by the court to calendar his *Pitchess* motion. While arguing for a continuance, appellant's counsel represented to the court that he had filed a *Pitchess* motion on May 27, 2011.

Although the record indicates otherwise, even if we accept appellant's representation, the filing of a *Pitchess* motion, four days before trial, did not constitute good cause for continuing the trial. As the court pointed out, and counsel agreed, he had been on the case for many months, and had in fact represented appellant at the preliminary hearing. Counsel had sufficient time to determine the need for a *Pitchess* motion and to file the motion with the statutorily required 16-day notice. (Evid. Code, § 1043, subd. (a); Code Civ. Proc., § 1005, subd. (b).)

Counsel offered no excuse for his failure to timely file the *Pitchess* motion nor did he request an order shortening time to set the motion before trial. Counsel was aware that Detective Fitzgerald wrote the search warrant affidavit and the police report, and was the sole witness at the preliminary hearing. Counsel failed to file the motion even when he acknowledged that he was aware of the specific fact that he believed made the motion necessary. Appellant's brief states "The credibility of Deputy Fitzgerald was critical to the defense. When Fitzgerald arrested the appellant then released him in March 2011, that was the *trigger for counsel* to request a *Pitchess* Motion." (Italics added.) In court, counsel argued that his client was rearrested on April 26, and in a declaration filed with the court he stated that appellant was arrested on May 9. Had appellant filed the *Pitchess* motion on either of those dates he would have complied with the statutorily required notice.

Appellant's citation to *Hall v. Superior Court* (2005) 133 Cal.App.4th 908, does not assist him. In *Hall,* the supervising judge of the Compton courthouse issued a memorandum requiring that all motions be heard at least 30 days before trial. Hall attempted to file a *Pitchess* motion after the 30-day motion cutoff date had passed and, pursuant to the supervising judge's memorandum, the trial court would not calendar the motion. (*Hall v. Superior Court*, *supra*, at p. 913.) On a petition for writ of mandate, the Court of Appeal issued a peremptory writ directing the trial court to permit the motion be filed. The Court of Appeal found that the 30-day motion cutoff rule was invalid because it was the functional equivalent of a local rule but had not been properly promulgated or adopted in accordance with statute and rules of court. (*Id.* at pp. 914–918.)

Here, the denial was not based on an automatic 30-day cutoff or as part of a systematic effort to still be "denying defendants a hearing on their *Pitchess* Motions" as appellant asserts. What is at issue here is the discretion of the court to deny a continuance in light of what appeared to be delay tactics. We note that the other reason proffered by appellant for the continuance was to interview witness Delgado. Counsel was aware of Delgado's role and importance to the defense as early as the preliminary hearing. He failed to adequately explain or justify to the court that he had been diligent in his investigation of the case. We find no abuse of discretion in the trial court's denial of the request for a continuance.

III. Medical Marijuana Defense

Appellant contends the trial court erred in failing to sua sponte instruct the jury on the medical marijuana defense. We disagree. The trial court must instruct sua sponte on a defense "'only if it appears that the defendant is relying on such a defense, or if there is substantial evidence supportive of such a defense and the defense is not inconsistent with the defendant's theory of the case.'" (*People v. Barton* (1995) 12 Cal.4th 186, 195, quoting *People v. Sedeno* (1974) 10 Cal.3d 703, 716.)

A medical marijuana defense requires the defendant to put on evidence that he has a medical condition for which a licensed physician recommended or approved the use of

marijuana. (Health & Saf. Code, § 11362.5.) Here, appellant never raised the defense. There was no evidence presented at trial that appellant had a medical condition that warranted the use of medicinal marijuana. There was no evidence that a licensed physician recommended or approved the use of medicinal marijuana. In sum, there was no evidence supporting a medical marijuana defense and the trial court did not err in failing to sua sponte instruct the jury on the elements of such a defense.

IV. *Brady* Violations

Appellant contends the prosecutor violated his due process rights under *Brady, supra,* 373 U.S. 83 by failing to disclose (1) that appellant's fingerprints were not found at the scene, (2) that Detective Fitzgerald obtained information from an official law enforcement database, and (3) that a supplemental report had been prepared.

A. Applicable Law

In *Brady*, the United States Supreme Court held "that the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." (*Brady, supra,* 373 U.S. at p. 87.) The court has since held that the duty to disclose such evidence exists even though there has been no request by the accused (*United States v. Agurs* (1976) 427 U.S. 97, 107), that the duty encompasses impeachment evidence as well as exculpatory evidence (*United States v. Bagley* (1985) 473 U.S. 667, 676), and that the duty extends even to evidence known only to police investigators and not to the prosecutor (*Kyles v. Whitley* (1995) 514 U.S. 419, 438). Such evidence is material '"if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.'" (*Id.* at p. 433.) In order to comply with *Brady*, "the individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf in the case, including the police." (*Kyles v. Whitley, supra,* at p. 437.)

"[T]he term '*Brady* violation' is sometimes used to refer to any breach of the broad obligation to disclose exculpatory evidence—that is, to any suppression of

so-called '*Brady* material'—although, strictly speaking, there is never a real '*Brady* violation' unless the nondisclosure was so serious that there is a reasonable probability that the suppressed evidence would have produced a different verdict. There are three components of a true *Brady* violation: The evidence at issue must be favorable to the accused, either because it is exculpatory, or because it is impeaching; that evidence must have been suppressed by the State, either willfully or inadvertently; and prejudice must have ensued." (*Strickler v. Greene* (1999) 527 U.S. 263, 281–282, fn. omitted.) Prejudice, in this context, focuses on "the materiality of the evidence to the issue of guilt or innocence." (*United States v. Agurs, supra,* 427 U.S. at p. 112, fn. 20.) Materiality, in turn, requires more than a showing that the suppressed evidence would have been admissible (cf. *Wood v. Bartholomew* (1995) 516 U.S. 1, 2), that the absence of the suppressed evidence made conviction "more likely" (*Strickler v. Greene, supra,* at p. 289), or that using the suppressed evidence to discredit a witness's testimony "might have changed the outcome of the trial" (*ibid.*). A defendant instead "must show a 'reasonable probability of a different result.'" (*Banks v. Dretke* (2004) 540 U.S. 668, 699.)

B. Analysis

1. Appellant's Fingerprints Were Not Found at the Scene

Detective Fitzgerald was asked on cross-examination whether he had done any fingerprint or DNA analysis of the Pepsi can recovered from the dresser. He testified that fingerprints had been requested but there were "no prints able to be lifted off the can." Appellant's counsel stated: "Again, another item of information that's new to me. I have not received that information."

There was no *Brady* violation here because it cannot be shown what additional exculpatory or impeachment value appellant could have shown from this evidence. The jury heard that appellant's fingerprints were not found on the can. Evidence that is presented at trial cannot be considered suppressed. (*People v. Verdugo* (2010) 50 Cal.4th 263, 281.)

2. Law Enforcement Database

Detective Fitzgerald was asked if he did any research before he served the warrant to determine who lived at the residence on 106th Street. He testified that he "surveilled the location" and "accessed an official law enforcement database" and found that appellant's name was associated with the address. On cross-examination, Detective Fitzgerald testified that he did not include these facts in his report because he did not see the relevance after he had arrested appellant inside the location. He testified that appellant was not the only name linked to the property and he could not tell from the search how long a person may have lived there.

Appellant's claim fails to meet the *Brady* requirements because appellant cannot even show how Detective Fitzgerald's use of the database has any exculpatory or impeachment value. Appellant cannot show how these facts were favorable to him or how he was prejudiced by the delayed disclosure of these facts. (*Strickler v. Greene*, *supra*, 527 U.S. at pp. 281–282.)

3. Supplemental Report

On cross-examination Detective Fitzgerald testified that it was standard practice for the Los Angeles County SWAT team to use ladders to climb over walls and look through windows. He confirmed that the practice was employed in this case and in every case. When asked if he had included this fact in his report he testified that he believed it was in a supplemental report. Appellant's counsel stated that this was "a third item that [he had] not received." During a break, appellant's counsel asked for a copy of the supplemental report. Detective Fitzgerald replied: "Absolutely. We can get that."

For several reasons, the delayed disclosure of the report did not constitute a *Brady* violation. The supplemental report was neither exculpatory nor impeaching. The state of the evidence before the jury prior to questions regarding the supplemental report was more favorable to appellant than after the disclosure of a supplemental report. Detective Fitzgerald testified that one of his officers had looked through the bathroom window and spotted Delgado throwing narcotics in the toilet. Appellant's investigator later testified that the bottom of the window was seven feet two inches from the ground. The

supplemental report supported Detective Fitzgerald's testimony and explained how a SWAT team member with the use of a ladder could have seen Delgado.

Furthermore, appellant does not claim that the supplemental report was not in fact turned over to him. "[E]vidence that is presented at trial is not considered suppressed, regardless of whether or not it had previously been disclosed during discovery." (*People v. Morrison* (2004) 34 Cal.4th 698, 715.) In other words, "[n]o denial of due process occurs if *Brady* material is disclosed to [the accused] in time for its effective use at trial." (*United States v. Higgs* (3d Cir. 1983) 713 F.2d 39, 44.) The disclosure of Detective Fitzgerald's supplemental report about the SWAT team's use of ladders was disclosed in time for appellant to make "effective use" of it at trial. (*Id.* at p. 44.)

V. Substantial Evidence Supported Appellant's Convictions

Appellant contends the evidence was insufficient to sustain the convictions. He contends the lack of fingerprint evidence linking him to the residence is significant. He also argues that the arresting officer lacked personal knowledge, engaged in "rank speculation," and offered testimony that he knew was untrue. We disagree.

When an appellant challenges the sufficiency of the evidence to support a conviction, "we review the entire record in the light most favorable to the judgment to determine whether it discloses evidence that is reasonable, credible, and of solid value such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt." (*People v. Bolin* (1998) 18 Cal.4th 297, 331.) We "'"presume in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence."'" (*People v. Davis* (1995) 10 Cal.4th 463, 509.) We draw all reasonable inferences in support of the judgment. (*People v. Pensinger* (1991) 52 Cal.3d 1210, 1237.) "An inference is not reasonable if it is based only on speculation." (*People v. Holt* (1997) 15 Cal.4th 619, 669.)

While it is true no identifiable fingerprint evidence was obtained from the residence, we believe the evidence here, together with the reasonable inferences to be

drawn therefrom, supports the jury's finding that appellant possessed cocaine, methamphetamine, and marijuana for the purpose of sale.

Appellant was present at 5:30 a.m. when a search warrant was executed on a house. Appellant had been seen leaving the house a few days earlier and a database search indicated that he lived at the location. Several articles of mail and receipts with appellant's name and the address of the residence were found in a dresser drawer at the house. Recovered from a dresser drawer in the bedroom in which appellant was found, was a "stash can" that contained a plastic baggie containing methamphetamine, and three baggies containing rock cocaine. Two sandwich-sized plastic baggies containing marijuana were also found in the dresser drawer. The quantity of each drug recovered exceeded that for personal use. Also recovered from the residence were two electronic scales commonly used to weigh narcotics, empty plastic baggies used to package narcotics, and a plastic bottle containing a substance used to dilute cocaine and methamphetamine. The residence had an elaborate surveillance system that could provide security to those engaged in the sale of narcotics. When arrested, appellant had $495 in small denomination bills on his person. The preceding facts were sufficient to establish that the narcotics were possessed for sale.

Appellant's contention that Detective Fitzgerald knowingly offered false testimony is based on a mischaracterization of the record because appellant has taken a statement out of the context in which it was made. Detective Fitzgerald testified that he determined that appellant resided at the location by accessing police databases. During cross-examination of Detective Fitzgerald the following exchange took place:

"Q [DEFENSE COUNSEL] In the report did you indicate—well, taking you back to December 2nd, 2010, at 5:30 in the morning, when did you first encounter my client?

"A [DETECTIVE FITZGERALD] When he was being—well, define 'encounter' first.

"Q [DEFENSE COUNSEL] When did you first observe my client?

"A [DETECTIVE FITZGERALD] That morning?

"Q [DEFENSE COUNSEL] Yes.

"A [DETECTIVE FITZGERALD] He was being escorted out of the location."

A few moments later defense counsel asked Detective Fitzgerald if there were any factors other than the information he obtained from the database which led him to the conclusion that appellant resided at the location. Detective Fitzgerald testified that he observed appellant coming out of the location a few days prior to serving the warrant.

In both his opening and reply briefs, appellant cites to Detective Fitzgerald's response "That morning?" but omits the question mark and asserts that it was knowingly false. It is clear from reading the transcript that Detective Fitzgerald first asked counsel to clarify the question and then asked if counsel was inquiring about the first time he observed appellant that morning, i.e. the day the search warrant was executed. His testimony that he had observed appellant on a prior occasion was not inconsistent with his previous response.

We are satisfied that substantial evidence supports appellant's convictions.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, Acting P. J.

DOI TODD

We concur:

_____, J.

ASHMANN-GERST

_____, J.

CHAVEZ